

(6) Supreme Court, U.S.
FILED

No. 85-5348

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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term

DAVID BUCHANAN,
Petitioner

versus

COMMONWEALTH OF KENTUCKY
Respondent

On Writ of Certiorari to the
Supreme Court of Kentucky

SUPPLEMENTAL BRIEF FOR RESPONDENT

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PURPOSE

The purpose of this supplemental brief is to inform the Court that, since the filing of Respondent's brief, the parties have entered into a stipulation which resolves a previously disputed question of fact relevant to Petitioner's second argument.

DISCUSSION

For his Argument II, Petitioner alleges that his conviction was obtained in violation of the Fifth and Sixth Amendments to the United States Constitution. (Petitioner's Brief, at 39-50). These federal constitutional claims were grounded squarely upon this Court's decision in Estelle v. Smith, 451 U.S 454 (1981). Petitioner's claims were factually premised upon his assertion that the prosecutor's use of psychiatric findings, obtained during an examination to determine whether Petitioner qualified for involuntary commitment under Ky.Rev.Stat. Ch. 202A, as rebuttal evidence violated Petitioner's Fifth and Sixth Amendment rights because Petitioner had not been informed that these findings could be used against him at trial. This rebuttal evidence was offered by the state to counter three (3) favorable psychological reports introduced by Petitioner. At three different places in his brief to this Court, Petitioner intimated that the trial

court ordered the "202A" examination on its own motion and without notice to Petitioner's counsel:

Prior to waiver, the Juvenile Court, apparently on his own motion, 'requested' a 'mental status exam' of David by a psychiatrist. (Petitioner's brief, at 6).

Petitioner was in custody when the examination was conducted at the instance of the Juvenile Court. Petitioner was given no warnings that his responses could be used against him at trial. (Id., at 47).

The Juvenile Court ordered the evaluation in question. There was never any notice to counsel that the state would use the results of that evaluation to prejudice a material aspect of petitioner's defense (Id., at 48-49).

After Respondent's brief was filed, the parties entered into a stipulation, which was filed in the Kentucky Supreme Court on October 16, 1986. (Appendix to Respondent's Supplemental Brief). As the Court can see, Petitioner has stipulated that, on or about August 11, 1981, the Juvenile Court ordered a psychiatric examination of Petitioner, at the request of defense counsel C. Thomas Hectus.¹

1. Mr. Hectus has represented Petitioner since the inception of this prosecution.

In Estelle. supra, the Court held:

A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding. (Emphasis added) 451 U.S. at 468.

Petitioner has conceded that he initiated the psychiatric evaluation by Dr. Lange. Therefore, the state could have properly compelled Petitioner to submit to examination by an independent psychiatrist. As noted in Respondent's original brief, the prosecutor in this case employed the less-intrusive procedure of introducing Dr. Lange's findings, which were made available to him during the "202A" examination. The Kentucky Supreme Court correctly concluded that there was no violation of the Fifth and Sixth Amendment.

CONCLUSION

WHEREFORE, Respondent respectfully urges the Court to affirm the Judgment below, based upon Petitioner's concession that he initiated the

psychiatric examination in question.

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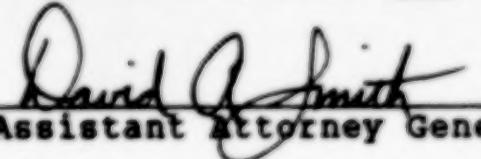
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CERTIFICATE OF SERVICE

I hereby certify that four copies of the Respondent's Supplemental Brief have been served by mailing to Hon. C. Thomas Hectus, and Hon. R. Allen Button, Gittleman & Barber, 635 West Main Street, Suite 400, Louisville, KY 40202, Counsel of Record; and Hon. Kevin M. McNally, and Hon. M. Gail Robinson, Assistant Public Advocates, 151 Elkhorn Court, Frankfort, KY 40601, Counsel of Record, this 18 day of November, 1986.


David A. Smith
Assistant Attorney General

A P P E N D I X

**Certification of Chief Deputy Clerk
Betty Whitton.....**

1

**Stipulation Concerning August 14,
1981 Psychiatric Examination of
David Buchanan.....**

2 - 3



C. Scott
Clerk

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C E R T I F I C A T I O N

I, John C. Scott, Clerk of the Supreme Court of Kentucky, do hereby certify that the attached "Stipulation Concerning August 14, 1981 Psychiatric Examination of David Buchanan" is a true and correct copy as it appears on file in my office in the case of David Buchanan vs. Commonwealth of Kentucky, File No. 83-SC-58-MR, Jefferson Circuit Court No. 82-CR-0406.

The attached "Stipulation Concerning August 14, 1981 Psychiatric Examination of David Buchanan" was filed in the above-captioned case on October 16, 1986 and was not part of the record on appeal when considered by the Kentucky Supreme Court.

Done this 16th day of October, 1986, at Frankfort, Kentucky.

JOHN C. SCOTT, CLERK

BY: Betty Whutton

Betty Whutton
Chief Deputy Clerk

FILED

SUPREME COURT OF KENTUCKY
FILE NO. 83-SC-58-MR

OCT 16 1986

John C. Scott
CLERK
SUPREME COURT

DAVID BUCHANAN

APPELLANT

VERSUS

STIPULATION CONCERNING AUGUST 14, 1981
PSYCHIATRIC EXAMINATION OF DAVID BUCHANAN

COMMONWEALTH OF KENTUCKY

APPELLEE

The parties hereto, David Buchanan and the Commonwealth of Kentucky, by counsel stipulate as follows:

1. On or about August 11, 1981, defense counsel C. Thomas Hectus moved the Jefferson District Court to order a psychiatric examination of David Buchanan for the purpose of determining whether or not he satisfied the "KRS 202A criteria." Jefferson District Judge Fitzgerald sustained that motion and entered an order accordingly.

2. Pursuant to that order, Psychiatrist Robert Lange examined David Buchanan on or about August 14, 1981.

3. Dr. Lange's August 17, 1981 report includes an opinion on the competency of David Buchanan to stand trial,

although no such opinion had been ordered or requested.


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